

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

M.B., : CIVIL ACTION  
:  
Plaintiff, :  
:  
vs. :  
:  
ROOSEVELT INN LLC, et al., : NO. 21-2984  
:  
Defendants. :

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K.R., : CIVIL ACTION  
:  
Plaintiff, :  
:  
vs. :  
:  
ROOSEVELT INN LLC, et al., : NO. 21-3218  
:  
Defendants. :

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C.A., : CIVIL ACTION  
:  
Plaintiff, :  
:  
vs. :  
:  
ROOSEVELT INN LLC, et al., : NO. 21-3222  
:  
Defendants. :

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3 B.H., : CIVIL ACTION  
4 Plaintiff, :  
5 vs. :  
6 ROOSEVELT INN LLC, et al., : NO. 21-3225  
7 Defendants. :

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10 A.H., : CIVIL ACTION  
11 Plaintiff, :  
12 vs. :  
13 ROOSEVELT INN LLC, et al., : NO. 21-3277  
14 Defendants. :

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16 C.A., : CIVIL ACTION  
17 Plaintiff, :  
18 vs. :  
19 WYNDHAM WORLDWIDE : NO. 21-3392  
20 CORPORATION, et al., :  
21 Defendants. :

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3 B.H., : CIVIL ACTION  
4 :  
5 Plaintiff, :  
6 :  
7 vs. :  
8 :  
9 WYNDHAM WORLDWIDE : NO. 21-3396  
10 CORPORATION, et al., :  
11 :  
12 Defendants. :  
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10 K.R., : CIVIL ACTION  
11 :  
12 Plaintiff, :  
13 :  
14 vs. :  
15 :  
16 WYNDHAM WORLDWIDE : NO. 21-3401  
17 CORPORATION, et al., :  
18 :  
19 Defendants. :  
20 :  
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17 A.H., : CIVIL ACTION  
18 :  
19 Plaintiff, :  
20 :  
21 vs. :  
22 :  
23 WYNDHAM WORLDWIDE : NO. 21-3430  
24 CORPORATION, et al., :  
25 :  
26 Defendants. :  
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24 (CONT.)  
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2 A.H., : CIVIL ACTION  
 3 :  
 4 Plaintiff, :  
 5 :  
 6 vs. :  
 7 :  
 8 ROOSEVELT INN, LLC, et al., : NO. 21-3914  
 9 :  
 10 Defendants. :  
 11 :  
 12 - - - - -

13 PHILADELPHIA, PA

14 SEPTEMBER 29, 2021

15 BEFORE: THE HONORABLE GENE E.K. PRATTER, J.

16 HEARING ON MOTION FOR REMAND

17 APPEARANCES:

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and C.A. cases

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Official Court Reporter

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Philadelphia, PA 19106

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(Transcript produced by machine shorthand via C.A.T.)

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1 (Deputy Clerk opened court)

2 THE COURT: Hello, please take your seats.

3 Whoever's going to be arguing, please come up front and if

4 you're all going to argue, you can stay there and be

5 uncomfortable. Well, to add to your come-back-to-court

6 experience today, I've arranged for a criminal case jury to

7 finish their deliberations. I'm told they've reached a

8 verdict and they're going to be coming in and delivering a

9 verdict so you all get the extra thrill of watching what you

10 may never have seen before which is a 10b-5 securities fraud

11 criminal case come to a conclusion. So, you know, I don't

12 know whether you're going to put that on your timesheets or

13 not, but there we go. Speaking of which, it looks like it's

14 full employment oral argument set aside for the issues posed

15 by the motion for a remand in the case and I'm just going to

16 use the name Roosevelt Inn at Docket Number 21-2984 to refer

17 to all the various records, but just to note for the record,

18 it's Captions 2984, 3392, 3222, 3396, 3225, 3401, 3218, 3430,

19 3277, 3914. If I missed any of your cases, it was

20 inadvertent, but let me know. I am happy to listen to you in

21 any order that you'd like, presumably you know somebody's

22 planning to do something, so we don't have to have a lot of

23 repetition particularly since I will be holding you up a

24 little bit to take this verdict. The cases were removed and

25 then the plaintiffs filed motions for remand. So I would



1     assume I will first hear from the plaintiffs who wish to have  
2     the cases returned to State Court, but if it works better for  
3     you all to do it in some other fashion, I assure you that if I  
4     can't follow along, certainly my law clerk can.

5             How would you like to proceed?

6             MS. MARKS: Good afternoon, Your Honor. Emily Marks  
7     from Kline & Specter on behalf of the plaintiffs M.B., C.A.,  
8     B.H. and K.R. I think it makes sense as plaintiffs' counsel  
9     to go first.

10            THE COURT: Fine. Let me first then take a full  
11     attendance. I am actually looking at this long list where  
12     you've already done the sign-in, but I want to give you all a  
13     chance to use your vocal cords and Ms. Feldman here will take  
14     down the names of everybody who is here.

15            So, Ms. Marks, I have you already. Who else?

16            MR. HUGHES: Good afternoon, Your Honor. Peter  
17     Hughes, Dilworth Paxson LLP, also for M.B., C.A., B.H. and  
18     K.R.

19            THE COURT: Okay.

20            MR. HEINOLD: Good afternoon, Your Honor. K. Andrew  
21     Heinold of Saltz Mongeluzzi & Bendesky for the plaintiff A.H.

22            THE COURT: Thank you. Would you mind if I just  
23     said hello to all of you at the end as opposed to each of you  
24     individually? Okay, let's keep going.

25            MR. MARION: Charles Marion and my colleague,

1 Justina Byers, we're with Blank Rome, on behalf of we call  
2 them the Roosevelt Defendants, the debtors, and the related  
3 nondebtors, Roosevelt Inn, Roosevelt Motor Inn, UFVS  
4 Management and Yagna Patel.

5 MR. ELIADES: Good afternoon, Your Honor. Dan  
6 Eliades, K&L Gates, for Wyndham Worldwide Corporation, Wyndham  
7 Hotel Group, LLC, Wyndham Hotels and Resorts, Inc., Wyndham  
8 Hotel Management, Inc., and Days Inn Worldwide, Inc.

9 MS. FOREMAN: Good afternoon, Your Honor. Melanie  
10 Foreman and my colleague, Tom Wagner, from Marshall Dennehey  
11 on behalf of Alpha-Centurion Security Inc. in the M.B.  
12 lawsuit.

13 MR. SMITH: Good morning, Your Honor. There aren't  
14 enough seats up there so I was just hanging back here.

15 THE COURT: Actually, in my world, it's afternoon.

16 MR. SMITH: Oh. Good afternoon. Matthew Smith from  
17 Saul Ewing on behalf of additional defendant, Eighty Eight,  
18 L.P.

19 THE COURT: I should have, when we started here, I  
20 should have explained that the protocol I've been following in  
21 this courtroom is that when you speak, you can take your masks  
22 off as long as those who are next to you are satisfied with  
23 that and, of course, if you are as well. We've had no problem  
24 with that, but I leave it to you all, but it does make it a  
25 little easier for Ms. Feldman to understand what's going on.

1           Okay. Next, sir.

2           MR. BEZAR: Good afternoon, Your Honor. Nadeem  
3    Bezdar from Kline & Specter on behalf of the plaintiffs that  
4    Ms. Marks has identified.

5           THE COURT: Okay.

6           MS. MARTIN: Good afternoon. Damali Martin,  
7    McCormick Priore, on behalf of 4200 Roosevelt Boulevard and  
8    4200 Rose Hospitality.

9           MR. MAHONEY: Good afternoon, Your Honor. Harry  
10   Mahoney, M-A-H-O-N-E-Y, from Deasey Mahoney, on behalf of  
11   American Motor Inns, Inc.

12          MS. PROMISLO: Good afternoon. Jacqueline Promislo,  
13   Cozen O'Connor, for the defendant Alpha-Centurian in the A.H.  
14   case.

15          MR. SASSO: Good afternoon, Your Honor. Adam Sasso,  
16   Stradley Ronon Stevens & Young, here on behalf of defendant  
17   Alpha-Centurian in the C.A., B.H. and K.R. cases.

18          MR. SPITZ: Good afternoon, Your Honor. Charles  
19   Spitz from Post & Schell and I represent 4200 Rose Hospitality  
20   and 4200 Roosevelt Boulevard in the A.H. case.

21          MR. HELLER: Good afternoon, Your Honor. Nathan  
22   Heller from DLA Piper on behalf of Wyndham Hotels and Resorts  
23   and the other Wyndham entities that Mr. Eliades, my cocounsel,  
24   already put on the record.

25          THE COURT: Okay.

1 MS. DESILVESTER: Good afternoon, Your Honor.  
2 Catherine DeSilvester of Bennett Bricklin & Saltzburg on  
3 behalf of the Ritz Hotel Group in the B.H. and C.A. matter.

4 MS. PRUDENTE: Good afternoon, Your Honor.  
5 Katherine Prudente with Thomas, Thomas & Hafer on behalf of  
6 Ramara, Inc. in the C.A. and B.H. matter.

7 MS. SANDORA: Good afternoon, Your Honor. Meghan  
8 Sandora, Margolis Edelstein, on behalf of Ashoka Investment &  
9 Management in the B.H. and C.A. matters.

10 THE COURT: All right, I think I've got everybody.  
11 If I've skipped you or you all are hiding behind somebody  
12 else, let me know now. Very well, I guess I'd like to hear  
13 then from the plaintiffs on the argument of remand and then I  
14 suppose, although I don't want anybody to feel frustrated  
15 here, if there are some unique arguments on behalf of any  
16 particular defendant, then we can have more than one argument,  
17 but presumably you all have interacted with each other and so  
18 I'm guessing, partially hoping, but guessing that there's  
19 going to be one primary argument on behalf of the defendants  
20 as opposed to one for each of you that would be duplicative.

21 But, if not, I'm here to serve.

22 Okay. Go ahead.

23 MS. MARKS: Your Honor, plaintiffs M.B., C.A., B.H.  
24 and K.R. seek remand of the state civil actions pursuant to  
25 equitable remand 28 U.S.C. 1452(b) or, in the alternative,

1 permissive abstention per 28 U.S.C. 1334(c)(1).

2 THE COURT: What would that accomplish if I did the  
3 permissive abstention? What would that really do for anybody?

4 MS. MARKS: Your Honor, I think it would result in  
5 the same result for equitable remand which is the return of  
6 these cases to State Court where they belong.

7 THE COURT: Okay. Go ahead. Sorry.

8 MS. MARKS: Your Honor, my clients are seeking that  
9 their cases be remanded to State Court in these cases because  
10 this is where their cases were filed. This is where their  
11 cases were commenced. This is where their cases have been  
12 aggressively litigated for years. And plaintiffs chose to  
13 have their cases heard by citizens of Philadelphia County who  
14 have a vested interest in the outcome of these cases that  
15 involve the sexual exploitation of these young women, who at  
16 the time were children, at three Philadelphia hotels. These  
17 cases could not have been brought in Federal Court at all  
18 without the Roosevelt Defendants', the debtors, filing of  
19 bankruptcy, a bankruptcy that was filed after trial had  
20 commenced in the M.B. case in an effort to halt that trial and  
21 to halt the other litigation as well as engage in forum  
22 shopping.

23 THE COURT: Well, that smacks of an unstated, but  
24 unmistakable, as well, argument of potential bad faith on the  
25 part of the defense. Is that what you're really going -- do

1 you really want to make that allegation?

2 MS. MARKS: I'm not making that allegation, Your  
3 Honor. I'm simply saying what we have before us is evidence  
4 that what the Roosevelt Defendants were trying to do was to  
5 stop the trial and to engage in forum shopping.

6 THE COURT: Well, those sound very, if not bad, then  
7 at least on the way to be bad faith from a legal argument  
8 standpoint.

9 MS. MARKS: Well, Your Honor, what I say, I don't  
10 say lightly, but I don't think we need to get to any  
11 accusations about bad faith. What I'm saying is, though, what  
12 it is clear happened was that the bankruptcy was filed for  
13 purposes of stopping the trial and that's not the first time  
14 that the Roosevelt Defendants had tried to stop the trial in  
15 the M.B. case. They filed a motion to continue the trial  
16 which was denied by Judge Cohen. They also filed a motion to  
17 change venue in the form of a motion in limine which was also  
18 denied by Judge Cohen.

19 THE COURT: As I understand it, they tried, I guess,  
20 twice to postpone or move the trial if I understand the  
21 arguments correctly prior to bankruptcy. So maybe on the  
22 continuum from wherever to bad faith, there is a stop -- a  
23 gamesmanship as a point in all of this behavior. Is that  
24 where you are on that point?

25 MS. MARKS: Absolutely, Your Honor.

1 THE COURT: Okay, why is that bad?

2 MS. MARKS: Your Honor, because it's manipulation of  
3 the court system to deprive the plaintiffs of their choice of  
4 forum and venue which was the Philadelphia Court of Common  
5 Pleas.

6 THE COURT: So how have you been prejudiced? How  
7 did each plaintiff get prejudiced that you're at least  
8 concerned with?

9 MS. MARKS: Your Honor, the plaintiffs have been  
10 prejudiced because these cases belong in State Court. Again,  
11 this is where they chose to have their case.

12 THE COURT: Have we not been nice to you here?  
13 What's the problem?

14 MS. MARKS: No, Your Honor, I certainly don't say  
15 that.

16 THE COURT: No, that sounds facetious. I don't mean  
17 that, of course, but I'm actually looking for some explanation  
18 of what is the prejudice in terms of two forums. I would  
19 think that you might be willing to talk about the timing and  
20 the investment and getting ready and on the eve of trial, et  
21 cetera, and that has a -- that smacks of prejudice as opposed  
22 to some ephemeral notion of the difference between "State  
23 Court" and "Federal Court."

24 MS. MARKS: Yes, Your Honor, I can respond to that.  
25 So with regard to the M.B. case, jury selection was scheduled

1 for June 17th. The trial was first assigned to Judge  
2 Cunningham and then reassigned to Judge Stella Tsai. The  
3 parties filed approximately 40 motions in limine and  
4 responses. Counsel for the parties toured the courtroom where  
5 the trial was going to be heard and the trial testimony of  
6 additional defendant, Daiquan Davis, was videotaped at the  
7 request of the Roosevelt Defendants. When that testimony went  
8 poorly, they filed for bankruptcy just hours before jury  
9 selection. That case, Your Honor, the M.B. case had been  
10 litigated since 2017, so quite some time, and this wasn't a  
11 bankruptcy that was just filed on the verge of trial. It was  
12 actually filed after trial had started. As I had mentioned,  
13 the Roosevelt Defendants' efforts to, you know, halt that  
14 litigation didn't just begin with the bankruptcy. There had  
15 been a motion to change venue and also a motion to continue  
16 trial. They have done everything that they could to deny  
17 plaintiffs their choice of forum.

18 As far as the other cases and the investment in the  
19 State Court actions, those cases, although they did not have  
20 trial dates, they were aggressively litigated for years and  
21 were nearing completion. Contrary to the Roosevelt  
22 Defendants' assertion that discovery in those cases was  
23 somewhat postponed due to the pandemic, that's not accurate.  
24 There were nearly 20 depositions taken of desk clerks,  
25 managers, former employees who were tracked down who were



1 working for the North American Motor Inns, as that particular  
2 hotel had been sold during the pendency of the litigation. So  
3 the discovery in those cases, because the discovery as far as  
4 the Roosevelt Hotel was complete with regard to the M.B. case,  
5 was focusing on the other two hotels. The defendants took my  
6 clients' depositions over two days. They were grilled.

7 THE COURT: But all that would be imported into a  
8 federal lawsuit, would they not? The idea that it would be  
9 removed doesn't mean we reset the clock and everything starts  
10 all over.

11 MS. MARKS: Your Honor, but the State Court is  
12 intimately familiar with these cases and everything that has  
13 transpired --

14 THE COURT: Why do different judges have those  
15 cases, have all the cases?

16 MS. MARKS: Your Honor, initially, the M.B. case, I  
17 believe, some of the decisions were made by Judge Cohen and  
18 Judge Shelley Robins New and then we had the trial assignment.  
19 As far as the C.A., B.H. and K.R. matters, initially Judge  
20 Anders was presiding over those cases and when he became the  
21 supervising judge, the matters were reassigned to Judge  
22 Carpenter. So the Philadelphia Court of Common Pleas judges  
23 have expended countless hours resolving too many discovery --

24 THE COURT: That conjures up this sort of  
25 institutional memory as opposed to what we have here which is

1 the single docket. No, I understand the point you're making,  
2 but I think it's hard to say. It's really not an equivalent  
3 of saying that one judge has some sort of arguable mastery  
4 over the facts and the background of the case as opposed to  
5 the institution of the Court of Common Pleas.

6 MS. MARKS: Your Honor, if I could provide some  
7 background information about the particular cases and so  
8 M.B. -- and that may also bring light to why it's so important  
9 that the cases be tried in Philadelphia Court of Common Pleas  
10 where, again, the plaintiffs chose to have their cases heard.

11 So M.B. was sold for sex at the Roosevelt Inn when  
12 she was just 14 years old. Plaintiffs C.A. and B.H. were also  
13 sold for sex at the Roosevelt Inn as well as the Days Inn on  
14 Roosevelt Boulevard and the North American Motor Inns, both  
15 also Philadelphia hotels. The North American Motor Inns is  
16 located -- was located on City Line Avenue and it was since  
17 sold and now I believe not currently operating. The Days Inn  
18 on Roosevelt Boulevard is part of the Wyndham brand of hotels.  
19 The Wyndham defendants make up the largest brand of hotel  
20 chains in the world. So we're dealing with all three hotels  
21 that are Philadelphia well-known hotels where sex trafficking  
22 has taken place. So as far as remander or abstention, which  
23 is why we're here before Your Honor, the question that we have  
24 is where these cases should be tried. So recently, Judge  
25 Chan, who's presiding over the Bankruptcy Court matters, made

1 it clear that the automatic stay does not apply to the list of  
2 other defendants not related to the Roosevelt Defendants. So  
3 those cases can be -- can move forward. As I will explain to  
4 Your Honor, the criteria for remand or abstention all favor  
5 remand and the courts have broad discretion in remanding the  
6 cases. And most courts have been guided by a seven-factor  
7 test and I believe here that the parties agree that the seven  
8 factor test which was set forth -- it's the Dieterly v. Boy  
9 Scouts case that I'll refer to as the Boy Scouts case -- is  
10 the criteria for remand, but that where the parties differ is  
11 the applications of the facts to that criteria.

12 So, Your Honor, with respect to the criteria, one of  
13 the first factors is the effect, whether remand will have the  
14 effect on the efficient administration of the bankruptcy  
15 cases. And in these cases, remand will have little or no  
16 impact on the administration of the bankruptcy case. The  
17 Bankruptcy Court cannot decide these personal injury cases.  
18 They have to be heard in a court other than bankruptcy.  
19 There's absolutely no efficiency to having these cases be  
20 heard in the Federal District Court while there's a bankruptcy  
21 court matter because the Bankruptcy Court can't simply hear  
22 it.

23 The next criteria is the extent to which issues of  
24 state law predominate. All of plaintiffs' claims arise under  
25 Pennsylvania common law. As I mentioned, this case could not

1 have been brought in Federal Court. There's no federal  
2 question of law and there's no diversity jurisdiction.

3 THE COURT: Is there anything unsettled about the  
4 state law that you say is controlling here?

5 MS. MARKS: Well, Your Honor, certainly this is a  
6 new area of the law in that although plaintiffs' claims are  
7 personal injury claims, these are not run-of-the-mill motor  
8 vehicle cases or slip and falls, but I certainly don't mean to  
9 diminish the importance of those types of claims as they can  
10 be quite complex.

11 THE COURT: I should say.

12 MS. MARKS: These cases involve some of the first  
13 application of common law negligence theories to holding  
14 landowners and business operators accountable for the sexual  
15 exploitation and the selling of girls for sex by third  
16 parties.

17 So the Roosevelt Defendants have stated in filing  
18 that these cases --

19 THE COURT: How is that different? I have seen a  
20 number of cases where the hotel sublets out a portion to like  
21 a spa and then there's some alleged personal tort by the  
22 masseuse or the masseur and then the offended party sues not  
23 only the spa, but also the hotel landlord. Is that  
24 essentially -- I mean that theory seems to me to be  
25 reminiscent of what you're saying.

1 MS. MARKS: It is reminiscent, Your Honor, but it's  
2 different in that's these are sex trafficking cases.

3 THE COURT: Well, I understand that part. Okay.  
4 All right.

5 MS. MARKS: Your Honor, I anticipate that the  
6 Roosevelt Defendants will argue that these are not complex  
7 matters that certainly can be tried in Federal Court, but in  
8 State Court filings --

9 THE COURT: I'm sure there's some unintended slam  
10 there somewhere, but go ahead.

11 MS. MARKS: Well, the Roosevelt Defendants have  
12 stated --

13 THE COURT: Even a federal judge can figure their  
14 way through that. I get it.

15 MS. MARKS: No, Your Honor, I did not mean that, but  
16 that, you know, the Roosevelt Defendants have argued in State  
17 Court that these -- have agreed that these are complex issues,  
18 these are complex cases. In their motions to continue trial,  
19 they stated that -- in reference to the complexity of the  
20 litigation and the enormity of the task of finding replacement  
21 counsel. So their lead counsel, James Quinlan, who was a  
22 partner of Blank Rome, withdrew his appearance and actually I  
23 believe stopped working at Blank Rome just prior to the trial  
24 so they were requesting additional time. In an affidavit  
25 attached to that motion, Mr. Quinlan verified that, I'll

1 quote, "The file is one of the largest in size that I have  
2 been challenged to handle during my 15 year-plus legal  
3 career."

4 So, Your Honor, this is -- these are complex cases,  
5 and, as I mentioned, much time and effort and many resources  
6 that the Philadelphia Court of Common Pleas has invested in  
7 these cases over the years.

8 With respect to another criteria which is comity,  
9 Your Honor, in the Boy Scouts case that I referenced earlier,  
10 the District Court deferred to the State Court in that case,  
11 and that case, it had been pending in State Court for  
12 approximately six months prior to its removal with the Court  
13 ruling on -- in the State Court ruling on several motions.  
14 The District Court in the Boy Scout case determined that the  
15 Common Pleas Court was more familiar with the numerous factual  
16 disputes. Here we have cases that have been pending for  
17 years, one particular case where trial had commenced, and  
18 certainly these cases have been -- are much further along than  
19 the Boy Scout case was which was remanded back.

20 The next criteria, Your Honor, is the degree of  
21 relatedness or remoteness of the proceedings in the main  
22 bankruptcy case and there may be some connection to the  
23 bankruptcy case, but the Bankruptcy Court, Your Honor, as I  
24 mentioned, can't hear these cases. So what we're left with is  
25 where the cases should be tried.

1           The next criteria is the existence of a right to a  
2 jury trial.

3           THE COURT: I have to interrupt just a second.

4           MS. MARKS: Sure.

5           THE COURT: The natural breakpoint here for this  
6 jury would be when you are concluded with your preliminary  
7 argument. Would you agree that sounds like a natural breaking  
8 point?

9           MS. MARKS: Yes, Your Honor.

10          THE COURT: When might that be?

11          MS. MARKS: Your Honor, I probably have a few more  
12 minutes, but I understand.

13          THE COURT: No, no, no, I'm unhappy enough at having  
14 to interrupt you and hold you all up, but I really cannot let  
15 this jury sit in this other case and wait for the full panoply  
16 of all the arguments. I just don't want to interrupt you any  
17 more that I already have.

18          MS. MARKS: You know, Your Honor, I wouldn't mind if  
19 you need to conclude this matter. I understand.

20          THE COURT: Okay. Well, my usual routine is after  
21 you hear from your opponents, you get to pop back up and say  
22 anything more you want to, all right? But what I would like  
23 to know is will there be other plaintiffs' counsel arguing  
24 differences on behalf of other plaintiffs?

25          MR. HEINOLD: Good afternoon, Your Honor. We

1 represent plaintiff A.H. We're the only other plaintiff  
2 counsel. As you can hear, Ms. Marks is thoroughly analyzing  
3 for the Court so unless Your Honor has specific questions to  
4 us, we'll rely on what Ms. Marks says.

5 THE COURT: That's great. So how about if I just  
6 stick with my usual protocol. After I hear from the defense  
7 and you hear my questions of them, then you'll have a chance  
8 to argue some more. Will that be okay?

9 MS. MARKS: Yes, Your Honor.

10 THE COURT: Thank you very much.

11 Okay, Mr. Coyle, what do you need in terms of  
12 timing?

13 THE DEPUTY CLERK: We're ready.

14 THE COURT: They're ready to come in?

15 THE DEPUTY CLERK: They're ready. Counsel is in the  
16 witness room down here.

17 THE COURT: You can tell them to come on in here.

18 And the jury is in here? (Indicating)

19 THE DEPUTY CLERK: Yes.

20 THE COURT: And I'll just ask you, folks, if you  
21 wouldn't mind vacating your spots a bit.

22 Just so you all have a point of context, this is a  
23 ten-count criminal case involving Title 15 and Title 18  
24 securities fraud.

25 (After recess:)



1           THE COURT: So there you go. That's the other side  
2 of the fence. Do you want to come back on up? The excitement  
3 of that case was one of the codefendants was a former Eagles  
4 football player so that's what was interesting about that  
5 case.

6           Which of the defendants would like to speak first?

7           MR. MARION: Your Honor, Charles Marion on behalf of  
8 the debtors and related debtor parties.

9           THE COURT: Got it.

10          MR. MARION: Do you want me to use the podium or  
11 stay here?

12          THE COURT: Whatever works best for you.

13          MR. MARION: If it's okay, I'm going to use the  
14 podium.

15          THE COURT: You might then want to turn it.

16          MR. MARION: It's heavier than I thought.

17          THE COURT: That is, actually.

18          MR. MARION: Good afternoon, Your Honor. Charles  
19 Marion, Blank Rome, on behalf of the debtor defendants, the  
20 Roosevelt Inn, LLC and Roosevelt Motor Inn, Inc., and the  
21 nondebtor-related parties which are UFVS Management Company,  
22 LLC and Yagna Patel. And, Your Honor, I may refer to those  
23 four defendants as the Roosevelt Defendants. They're all  
24 affiliated with each other. Mr. Patel is the manager of the  
25 hotel and they're all insureds or additional insureds under

1 the policies that may or may not provide coverage here.

2 Your Honor, the cases we removed to this Court are  
3 absolutely related to the debtor's bankruptcy proceeding and  
4 estate. In our brief, we gave the definition that an action  
5 is related to a bankruptcy case where its outcome could  
6 conceivably have any effect on the estate being administered  
7 in bankruptcy.

8 THE COURT: Well, under your definition of what's  
9 related, what would not be related?

10 MR. MARION: I suppose, Your Honor, if there would  
11 be a claim that may not have any impact on the debtor's  
12 assets. I don't know what that may be.

13 THE COURT: What kind of claim would that be?

14 MR. MARION: That's a good question, Your Honor.

15 THE COURT: The reason I ask is, you know,  
16 related -- related can be either a loose or a tight reign.

17 MR. MARION: Yes.

18 THE COURT: And somewhere there should be a  
19 limitation on what is under the umbrella of "related."

20 MR. MARION: Yeah, and I guess to flesh it out a  
21 little bit more, Your Honor, the cases talk about if the  
22 outcome of these cases will alter the debtor's rights,  
23 liabilities, options, will impact on the handling and  
24 administration of the bankrupt estate, then they're related.  
25 And here we would argue they indisputably are related. The

1 plaintiffs obviously seek substantial amounts in damages in  
2 the five pending cases. If they get a verdict in any one of  
3 those five cases, it would probably greatly exceed the value  
4 of the assets our client has which, Your Honor, really are  
5 just the hotel. It's a mom and pop independent hotel on  
6 Roosevelt Boulevard in Northeast Philadelphia. A negligible  
7 amount of cash on hand and their insurance policies which, as  
8 Your Honor knows, coverage has been denied, there's litigation  
9 pending in this court before the Honorable Darnell Jones. It  
10 could very well be that our clients don't have any insurance  
11 coverage, but in the M.B. case, primary excess combined to 25  
12 million policy limits, but, Your Honor, there's also  
13 crossclaims in these cases with Alpha-Centurion, the security  
14 company the hotel hired, where if Alpha were to get a  
15 crossclaim verdict against my client, that would also impact  
16 the assets of the estate. So we would contend that they're  
17 clearly-related actions.

18           And, Your Honor, I wanted to mention the notice we  
19 filed last Friday. I don't know if Your Honor saw it. There  
20 were some orders recently ordered by Judge Chan in the  
21 bankruptcy case, one of which granted our clients' motion for  
22 basically a global mediation. All the parties and all their  
23 insurers in these cases have agreed to participate in that  
24 mediation. Judge Frank has been appointed as the mediator.  
25 He's conducting an initial conference with everyone next

1 Friday, October 8th. There was also an order entered which we  
2 submitted which has a bar date for claims, for tort  
3 claims under --

4 THE COURT: November?

5 MR. MARION: Yes, November 30th, Your Honor. So we  
6 anticipate the mediation, while Judge Frank is already at work  
7 in trying to get the parties together for some preliminary  
8 initial conferences, the actual probably multi-day mediation  
9 will likely take place in December or January and Judge  
10 Chan --

11 THE COURT: But she did not lift the stay, right?

12 MR. MARION: Correct, Your Honor, she hasn't ruled  
13 on that yet. She put that off. She actually expressed a --  
14 if I can -- I wasn't at the bankruptcy hearing, but as I  
15 understand it as was reported to me, she strongly favors  
16 having this mediation and hopes that it might, you know,  
17 achieve some kind of resolution here.

18 THE COURT: Well, that would be unusual for a judge  
19 to say.

20 MR. MARION: But, Your Honor, keeping the cases in  
21 this court would certainly, in our view, provide the most  
22 efficient way to administer and coordinate these cases. Your  
23 Honor's obviously already consolidated the cases for  
24 administrative purposes. That could not have happened in the  
25 State Court with five cases at different stages. The removal

1 we filed, Your Honor, was proper, it was timely, and it was in  
2 good faith. It was not done lightly -- I'm sorry, the  
3 bankruptcy, Your Honor. The removal was timely and properly  
4 filed in good faith, but so was the bankruptcy proceeding. It  
5 was not done for purposes of forum shopping. It was, rather,  
6 for our clients to find the most orderly way to coordinate and  
7 resolve all of these pending claims to allow them to  
8 reorganize and go about continuing to operate its hotel.

9 Contrary to what Ms. Marks has argued, the trial in the M.B.  
10 case had not yet commenced. As counsel said, jury selection  
11 was scheduled for the next day, we don't dispute that, but the  
12 trial had not certainly started. There was one trial  
13 deposition taken which the parties had started talking about  
14 back in March of this year. The judge had only been assigned  
15 one day before the bankruptcy was filed and, Your Honor, five  
16 days before we filed for bankruptcy, at the insurance  
17 carrier's prompting, I asked plaintiffs' counsel for a written  
18 settlement demand and it's in our papers, Your Honor. To that  
19 point, they had only demanded policy limits, \$25 million, and  
20 this was the Friday night before we filed for bankruptcy. On  
21 June 11, plaintiffs' counsel sent a letter saying that they  
22 would lower their settlement demand to \$24 million which, Your  
23 Honor, as I said, the value of the hotel we think is only  
24 probably worth about three and a half million or so. We don't  
25 know if there's any insurance coverage here so that was

1 certainly one of the factors which made our clients consider  
2 and ultimately decided to file for bankruptcy protection. Ms.  
3 Marks mentioned motions we filed which she claims were filed  
4 to try to avoid trial. That was not the case. As she herself  
5 mentioned, our colleague, Jim Quinlan, our partner, who had  
6 been -- literally attended every deposition in these cases and  
7 been at every event decided to go in-house for a good  
8 opportunity shortly before trial. He actually called  
9 plaintiffs' counsel and plaintiffs' counsel actually suggested  
10 to us that we might file a motion to continue the trial and  
11 that they would only file a soft opposition. So it's a little  
12 disingenuous for them to argue that we filed that to avoid  
13 trial. We did file it, however, and we also did file a motion  
14 to transfer venue because, Your Honor, when the plaintiffs  
15 filed all of these cases, they went to the media, which is  
16 their right, and there was a lot of negative publicity about  
17 our clients' hotel. We -- it was a very extensive motion to  
18 transfer venue. We had very real and legitimate concerns  
19 about the jury being poisoned by this negative media  
20 publicity. We attached multiple articles from different news  
21 sources which really casted a negative light on our clients so  
22 that was a very legitimate filing.

23           Your Honor, the Dieterly case that plaintiff relies  
24 on, while we do agree those are the factors that Your Honor  
25 can consider in deciding whether to remand or abstain, that

1 was a very different situation. The Boy Scouts of America, a  
2 huge organization, had a lot more assets than our client, a  
3 mom and pop hotel. There were various cases removed from  
4 different jurisdictions. The Dieterly case was from  
5 Philadelphia Court of Common Pleas, but the bankruptcy was  
6 filed in the District of Delaware so the comity issue was a  
7 bit different there and even if you do apply the seven factors  
8 from Dieterly as Ms. Marks went through, we contend that those  
9 factors weigh in favor of your not remanding the case.

10 THE COURT: Well, run through them and explain that  
11 to me. I think it seems to me that it's hard to tote up those  
12 factors and say they argue in favor of the removal. So why  
13 don't you explain to me why --

14 MR. MARION: Sure, Your Honor.

15 THE COURT: -- my quick toting them up on my fingers  
16 will --

17 MR. MARION: Okay, I'll be happy to do that. So the  
18 first is the effect on the efficient administration of the  
19 bankruptcy estate and we believe this factor weighs heavily in  
20 favor of not remanding because it would be most efficient and  
21 effective when it comes to the administration of the  
22 bankruptcy estate in our view to keep these related cases --

23 THE COURT: They tell me they don't plan to enforce  
24 a collective to get a judgment except in the bankruptcy so  
25 they're not going to interfere with the bankruptcy.

1           MR. MARION: That's not exactly true -- well, they  
2 say that, Your Honor, but a judgment would change their status  
3 to secured creditors. It would have significant impact on the  
4 bankruptcy estate. So that is not accurate what they've said  
5 in that respect, but certainly the bankruptcy proceedings  
6 being administered in this court, our clients' bankruptcy  
7 counsel, who was on one of the calls with Your Honor and  
8 unfortunately could not be here today, had another hearing,  
9 feels very strongly that it is important to keep these cases  
10 in this court to have the most efficient and effective way of  
11 administering them all. And as Your Honor --

12           THE COURT: Why would not the speedier resolution  
13 actually facilitate the bankruptcy proceedings particularly  
14 given the fact that -- well, you've got the question of the  
15 insurance and so it's really unknowable until that's resolved  
16 what anybody would be looking to to collect from, right? I  
17 mean I'm just not quite seeing why Federal Court makes it a  
18 better forum from the administration of the bankruptcy than  
19 State Court because in either one, you know, let's say I kept  
20 the cases and I said, Okay, you guys are ready to try the  
21 case, let's go at it tomorrow or whatever, you know, two  
22 weeks. You still end up with a verdict one way or another and  
23 how does that -- so why would being here be better than being  
24 done the street?

25           MR. MARION: Well --



1           THE COURT: The administration of the bankruptcy  
2 estate.

3           MR. MARION: I think, Your Honor, that obviously  
4 Congress provided for removal in this kind of bankruptcy  
5 situation and the Bankruptcy Court does take jurisdiction over  
6 the claims, but cannot liquidate those tort claims so they  
7 would have to be tried --

8           THE COURT: Right.

9           MR. MARION: -- and we believe it would be easier to  
10 have them all tried in this court, the same court in which the  
11 bankruptcy is pending.

12          THE COURT: But why?

13          MR. MARION: I mean I think, Your Honor, and not to  
14 say anything bad about the State Court, but the other four  
15 cases are not nearly -- I mean contrary to what Ms. Marks  
16 said, I don't believe any of those are close to trial and, you  
17 know, in some ways, the cases may get to trial more quickly in  
18 Federal Court than the State Court. And I think that to have  
19 them all in one forum, if I may, Your Honor --

20          THE COURT: Well, I'm just trying to figure out why.  
21 I mean I understand a little bit of what you're saying, but  
22 not in terms of saying that weighs in favor -- you know, why  
23 this particular issue weighs in favor of the remand -- the  
24 removal, I suppose, of the remand. I guess it gets a little  
25 complicated as to the nondebtors. And would a remand harm the

1 estate administration if there is some issue about allocating  
2 liability among defendants, I suppose, but I don't quite know  
3 why -- I can't get my hands around the concept of why that  
4 makes the removal better for the administration of the  
5 bankruptcy estate than the remand.

6 MR. MARION: Well, I will say, Your Honor, the  
7 Bankruptcy Code 28 U.S.C. § 157(b)(5), which we cited in our  
8 opposition brief, says that the manifest purpose of that  
9 section which we relied on is to centralize administration of  
10 the estate and to eliminate the multiplicity of forums for the  
11 adjudication of parts of the bankruptcy case. So, you know,  
12 in our view, it would be better. That factor would weigh in  
13 favor of keeping the cases here because they would all be in  
14 one forum.

15 THE COURT: Well, let's pose the following just to  
16 test the theory.

17 Let's say there had not been a consolidation. So  
18 let's say your worst nightmare is you get ten of us here at  
19 6th & Market which is no different than having 10 down the  
20 street, right, 10 judges?

21 MR. MARION: I'm not so sure, Your Honor, because I  
22 think in Federal Court there's more of an opportunity to have  
23 them deal with related cases and, you know --

24 THE COURT: We don't have to.

25 MR. MARION: You don't have to, no, that's true.

1 That's true.

2 THE COURT: That's what I'm saying. So imagine the  
3 nightmare and you've got ten of us to deal with.

4 MR. MARION: I don't think it's a nightmare, Your  
5 Honor. I think that would be fine.

6 THE COURT: Okay, so you get that mixed in. Do you  
7 see what I'm saying? I'm not quite sure what is it about the  
8 removal that makes it better for the bankruptcy  
9 administration.

10 MR. MARION: Well, I will say that Judge Chan has  
11 ordered this mediation and she actually has, even despite the  
12 pendency of the insurance coverage litigation which is  
13 ongoing, has gotten all of the insurers and all the parties to  
14 participate in that.

15 THE COURT: Is that mediation with Judge Frank  
16 coordinated --

17 MR. MARION: Yes -- I'm sorry.

18 THE COURT: -- with whatever Judge Jones may or may  
19 not be doing? Is there any coordination at all?

20 MR. MARION: Not that I'm aware of. Yeah, I don't  
21 believe so.

22 THE COURT: Have you guys told Judge Jones about it?

23 MS. BYERS: Your Honor, we don't represent the  
24 debtors in the Judge Jones' action. I'm not certain if the  
25 debtor counsel has notified Judge Jones of the mediation or

1 Judge Frank's participation.

2 THE COURT: Well, if all the insurers are going to  
3 see Judge Frank -- or former retired, whatever he is, former  
4 Judge Frank, I would simply recommend that it makes good sense  
5 to bring Judge Jones up to speed on that. He might find that  
6 to be a useful piece of information.

7 MR. MARION: I agree, Your Honor, and we'll advise  
8 insurance counsel for our client. It may have happened. I  
9 just don't know.

10 THE COURT: Let me put it this way. If I were Judge  
11 Jones and I found out after the fact, I would be dismayed.

12 MR. MARION: Okay. I'll make sure that's either  
13 happened or will happen.

14 THE COURT: Okay, why don't you move to the  
15 predominance of whether it's state law or not.

16 MR. MARION: Well, as Your Honor, I believe, alluded  
17 to, the issue or the claims, rather, in these cases are rather  
18 straightforward. They're negligence and negligent infliction  
19 of emotional distress. While trafficking cases may be a  
20 relatively new area of the law, we're really talking, Your  
21 Honor, about the well-settled Pennsylvania law and the duty of  
22 an innkeeper to its guests.

23 THE COURT: Why does that not say that state law  
24 predominates, in fact, it is the case and so it belongs in  
25 State Court.

1           MR. MARION: Your Honor, I think that one may be a  
2 wash. I think Your Honor could certainly apply these state  
3 law principles. We're not moving these cases to another  
4 jurisdiction outside of Pennsylvania. It's still the same  
5 application of Pennsylvania law. So I would argue that that's  
6 kind of a neutral factor here. And when it comes to comity,  
7 which is one of the next factors, you know, as I said in the  
8 Dieterly case, you were looking at a bankruptcy filed -- the  
9 Dieterly case was pending in the Philadelphia Court of Common  
10 Pleas as these cases were, but the bankruptcy was filed in  
11 Delaware District Court and there were some issues relating  
12 to, you know, across state or across different forums. Those  
13 concerns aren't present here. I mean we're just talking about  
14 cases that were either in Philadelphia State Court or  
15 Philadelphia Federal Court so I don't think we have those  
16 concerns in this case.

17           The degree or relatedness or remoteness of the  
18 proceedings of the main bankruptcy case, this, Your Honor, is  
19 one of the key differences from the Dieterly case. In that  
20 case, the Court found that remand would have limited effect  
21 upon the administration of the bankruptcy case, but here we  
22 really contend that it would hinder the efficient  
23 administration because you have these tort claims before  
24 different judges at different stages and they would all  
25 conceivably, you know, if the plaintiffs win in any of these

1 cases have a very large impact on the bankruptcy case and the  
2 bankruptcy estate. We cited law in our brief, Your Honor,  
3 that where the outcome of the litigation could have a profound  
4 effect on the assets in the bankruptcy estate, this factor  
5 counsels strongly against remand.

6 The next one, Your Honor, is the existence of a  
7 right to a jury trial which clearly is precedent in either  
8 court.

9 And prejudice -- the last is the prejudice to being  
10 voluntarily removed parties and there's really none here. The  
11 other defendants in our cases have either consented to removal  
12 or have removed themselves. As Your Honor has seen, they  
13 favor removal.

14 And just on abstention, Your Honor, that really --  
15 the law says it's the exception, not the rule, and there's,  
16 you know, policy of -- some courts have held that abstention  
17 would undercut the purpose of Section 157(b) of the Bankruptcy  
18 Code and the process we follow to remove the case to this  
19 Court.

20 So based on all these reasons, Your Honor, we  
21 believe the cases should remain and the motion should be  
22 denied.

23 THE COURT: Okay.

24 MR. MARION: Thank you.

25 THE COURT: Actually, why don't you take another

1 minute or two to address again my concern that something just  
2 doesn't feel right about the timing here.

3 MR. MARION: About the filing of the bankruptcy?

4 THE COURT: Yes.

5 MR. MARION: Well, Your Honor, I can tell you that  
6 our clients deliberated for months, if not years, about filing  
7 for bankruptcy and when we got closer to this trial and we did  
8 engage in a court-ordered settlement conference in the Court  
9 of Common Pleas and I think since the mediation in December  
10 of 2019 or thereabouts, the plaintiffs would not come down  
11 from policy limits 25 million and, again, Your Honor this is  
12 one case out of five pending cases. So it was quite clear --

13 THE COURT: All right, I understand it's just a  
14 number and maybe that shocks somebody into saying, Well, let's  
15 get off the dime here, you know, we've been dithering forever  
16 about bankruptcy or no bankruptcy. Yikes, they seem to be  
17 serious, yikes, we're starting tomorrow, yikes, where is that  
18 Bankruptcy Court filing, but it seems to me that Roosevelt Inn  
19 had no real estate that I can speak of or at least no mortgage  
20 shown.

21 MR. MARION: Right.

22 THE COURT: There are no liens that were there.  
23 There's not much of an unsecured debt from what I can see.

24 So other than the lawsuits, what prompted the  
25 bankruptcy? It's the lawsuits.

1           MR. MARION: Well, the lawsuits and the denial of  
2 insurance coverage, the exorbitant settlement demands. I mean  
3 COVID had an impact on the hotel. The owners had told us, you  
4 know, they were operating still but not -- barely staying  
5 above water from what we were told. So I think all those  
6 factors combined and, you know, the settlement demand just  
7 before trial was not an insignificant factor. It was, you  
8 know -- it just really caused our clients to take that step.

9           THE COURT: Yes, but why should I not look at the  
10 use of the Bankruptcy Code here as an effort to use the code  
11 as a shield from liability? It's virtually a sword, by the  
12 way, but let me just stick with the shield analogy. It's a  
13 shield from liability on the cases.

14           MR. MARION: Well, it's a stay. I mean, it's an  
15 automatic stay of the cases so the client can hopefully  
16 reorganize. It was a Chapter 11 filing, not a Chapter 7.  
17 They're not looking to liquidate, they're looking to  
18 reorganize and continue in business and, you know, frankly,  
19 Your Honor, in the bankruptcy proceeding, our clients are  
20 pursuing a path where they want to take what assets they do  
21 have or may have in insurance and create some sort of pool or  
22 trust for the legitimate claimants. You know, they were  
23 looking at one case going to trial very soon where the demand  
24 was so high and the risk of an adverse verdict was high. They  
25 weren't looking to avoid trial, but they were looking at, you



1 know, this could certainly, you know, liquidate or, you know,  
2 they would be out of business in any event, I guess, so they  
3 were looking for an opportunity to try to reorganize and  
4 remain in business and, you know, it's something they're  
5 entitled to do under the Bankruptcy Code. The timing perhaps  
6 wasn't ideal, I won't disagree too strongly with that, Your  
7 Honor. We were -- Ms. Byers and I were gearing up for trial  
8 like other counsel. Believe me, we were working around the  
9 clock. There was a separate lawyer who's handled the  
10 bankruptcy, but, you know, it was a good-faith filing. I mean  
11 it was not done for forum shopping or delay. It was really  
12 done so they could try to reorganize and continue in business.

13 THE COURT: Okay.

14 MR. MARION: Thank you.

15 THE COURT: Do any of the other defendants want to  
16 argue on the remand issue?

17 MR. ELIADES: I would, Your Honor, on behalf of the  
18 Wyndham Defendants.

19 THE COURT: Sure. Come on up.

20 MR. ELIADES: My glasses were all fogged up, Judge.

21 THE COURT: I know. Been there, done that.

22 MR. ELIADES: Your Honor, certain of the Wyndham  
23 entities are defendants in lawsuits filed on behalf of C.A.,  
24 B.H., K.R. and A.H. The Wyndham entities are not defendants  
25 in the M.B. case. So, accordingly, we'd only be arguing the

1 remand motions with respect to four cases and I note it's not  
2 with respect to M.B.

3           Your Honor, the plaintiffs in those four cases chose  
4 to bring a single lawsuit seeking damages from multiple  
5 defendants for trafficking alleged at several hotels. The  
6 defendants in each of those cases have asserted or are  
7 entitled to assert various crossclaims, indemnification claims  
8 or contribution claims and any damages which may be awarded to  
9 a plaintiff in one of the four cases that we're speaking about  
10 would need to be allocated amongst the various defendants who  
11 are found to have liability.

12           THE COURT: That was what I was talking to counsel  
13 about, that that might be where there's some administration of  
14 the estate and something about the bankruptcy forum that might  
15 at least have some relationship to what's happened here. I  
16 get it.

17           MR. ELIADES: Exactly, Judge, and we're talking  
18 about an administrative nightmare to use the Court's phrase  
19 earlier.

20           THE COURT: Well, no, that nightmare was the ten  
21 separate judges.

22           MR. ELIADES: Yeah. Well, you could see a situation  
23 where, you know, if the Court were to uncouple these cases and  
24 have Federal Court jurisdiction retained over the claims  
25 against the debtors, but have the matters proceed against the

1 nondebtor parties in the State Court, you would have, you  
2 know, all sorts of administrative challenges from dealing with  
3 crossclaims, indemnification claims to potentially, you know,  
4 the impact of adverse rulings in the State Court affecting the  
5 rights of the debtors. So -- but I'll get to that in a  
6 second.

7           So just to recap the overview, Judge, two of the  
8 defendants in the four actions that affect the Wyndham  
9 entities exercised their right to file a bankruptcy  
10 proceeding. The debtors then exercised their statutory right  
11 under 28 U.S.C. 1452 and separately removed only the claims by  
12 and against the debtors and the parties related to the debtors  
13 in C.A., B.H., K.R. and A.H. They also removed the claims  
14 related to the debtor parties to the M.B. case from the Court  
15 of Common Pleas to this Court. The remaining codefendants in  
16 those four actions exercised their statutory right and filed  
17 separate timely notices of removal removing only the claims by  
18 and against the nondebtor parties in the four litigations. So  
19 at this point, C.A., B.H., K.R. and A.H. have been removed and  
20 are pending before Your Honor and the parties and the claims  
21 in each of those litigations have been rejoined in this court  
22 in exactly the same posture that the plaintiffs chose to  
23 commence those cases in the State Court.

24           THE COURT: Except they didn't choose to come here  
25 and why -- I mean, is not -- well, to ask the question

1 actually is to answer the question. Is not the filing of one  
2 of your codefendants, one of the defendants, just the  
3 opportunity for opportunism for the rest of you because you  
4 couldn't be here in the first place?

5 MR. ELIADES: It is an opportunity, Judge. It's a  
6 statutory opportunity.

7 THE COURT: Okay.

8 MR. ELIADES: And we have to get over it. It's an  
9 opportunity that Congress gave to these nondebtor  
10 codefendants, but they can only exercise and take advantage of  
11 that opportunity if they can establish that the removal was  
12 proper which I'll address in a second.

13 THE COURT: Go ahead.

14 MR. ELIADES: So none of the removing parties have  
15 taken the position that the plaintiffs are not entitled at the  
16 appropriate time to a jury trial.

17 In fact, 28 U.S.C. 157(b)(5) provides a mechanism  
18 for District Courts to conduct trials in personal injury  
19 actions in exactly this situation.

20 So the plaintiffs in the C.A., B.H., and K.R.  
21 litigations filed separate motions to deem the removals by the  
22 nondebtor parties void, to remand those cases back to State  
23 Court, and we're asking this Court to exercise permissive  
24 abstention.

25 The plaintiff in the A.H. matter filed an identical

1 motion albeit arguably out of time. So the Wyndham Defendants  
2 and most, if not all --

3 THE COURT: Is that going to be your argument?  
4 Who's going to be the one to --

5 MR. ELIADES: I'm not going to argue that, Judge. I  
6 believe --

7 THE COURT: Okay, is somebody going to try to argue  
8 that?

9 MR. ELIADES: I believe counsel from Saul Ewing is  
10 going to argue that.

11 THE COURT: Not that I want to overemphasize the  
12 word try, but I have.

13 MR. ELIADES: Maybe counsel will not argue that.

14 THE COURT: Just saying.

15 MR. ELIADES: So the Wyndham defendants and most, if  
16 not all, of the nondebtor removing parties filed oppositions  
17 to the remand motions in those four cases, and as Your Honor  
18 is well aware, when there's an objection to a remand, the  
19 party that is invoking Federal Court jurisdiction has the  
20 initial burden of demonstrating that the removal to the  
21 District Court is proper by a preponderance of the evidence.  
22 So the joint removal by the Wyndham defendants and the  
23 nondebtor parties were made pursuant to 28 U.S.C. §§ 1334 and  
24 1452(a). So 1452(a) is the gateway to 1334 and that provides  
25 that a party may remove any claim or cause of action to the

1 District Court where the civil action's pending if the  
2 District Court has jurisdiction under 1334. And 1334(b) says  
3 that the District Court shall have original, but not  
4 exclusive, jurisdiction of all civil proceedings arising under  
5 Title 11 bankruptcy or arising in or related to bankruptcy  
6 cases. And Your Honor correctly, you know, pointed out the  
7 very, very broad related to jurisdiction that has come out in  
8 case law. The PriceWaterhouse case, which we have in our  
9 brief, contains a pronouncement from the Third Circuit that  
10 related to a jurisdiction is the broadest potential path to  
11 bankruptcy jurisdictions and the Pacor case, another Third  
12 Circuit decision --

13 THE COURT: It is at most a translucent concept in  
14 this case. At most.

15 MR. ELIADES: And as counsel for the debtor cited  
16 earlier, the Pacor case, you know, provides that related to  
17 jurisdiction -- or actually it's related to a bankruptcy case  
18 if its outcome could conceivably have any effect on the estate  
19 being administered in bankruptcy and we cited and I know the  
20 Eighty Eight L.P. defendant also cited a number of cases where  
21 circuit courts have found that related to jurisdiction is  
22 extremely broad and specifically was applied in connection  
23 with contribution, indemnification and crossclaims in personal  
24 injury cases.

25 Now, as debtor's counsel also cited, the conceivable

1 effect test is satisfied.

2 THE COURT: How can anybody with a straight face  
3 even call it a test? I mean I don't mean to be too  
4 argumentative about it, but that to me, that's almost as hard  
5 to get ahold of as related to is.

6 MR. ELIADES: I think we can fairly characterize it  
7 as a low hurdle, Judge.

8 THE COURT: All right. I don't want to beat that  
9 horse too much, but it does -- as somebody who spends their  
10 entire life it seems like dealing with all the tests that  
11 everybody comes up with, that one is, you know, hard to resist  
12 to talk about.

13 MR. ELIADES: So let me just say according to the  
14 Third Circuit, an action satisfies or clears that low hurdle  
15 if the outcome could alter the debtor's rights, liabilities,  
16 options or freedom of action either positively or negative in  
17 any way which impacts upon the handling and administration of  
18 the bankruptcy estate. And as I noted earlier, the outcome of  
19 the nondebtor party's potential crossclaims, contribution  
20 claims, indemnification claims inarguably could alter the  
21 debtor's liabilities. In addition, if there is a  
22 determination of liability against defendants in any of these  
23 actions, that liability would have to be specifically  
24 allocated among the debtor and nondebtor defendants who are  
25 found liable by the trier of fact, and that clearly would

1 affect the debtor's rights, liabilities, and options. And,  
2 you know, also to the extent that there is a bifurcation of  
3 these claims, discovery rulings by one court or in one court  
4 apart from the potential for inconsistent results could be  
5 binding upon and affect the debtor's rights, liabilities and  
6 options and also significantly affect the administration of  
7 debtor's estates.

8 THE COURT: I will say that it is absolutely  
9 undeniable that there's a greater facility in a single  
10 district to consolidate matters relatively easily and we do  
11 that all the time and it's a little more cumbersome to do if  
12 you've got, you know, ten different State Court cases.  
13 There's no getting around that for anybody to argue. It is  
14 easier to do. We do do it frequently. It's not necessarily  
15 going to happen, but one of the arguments made for it always  
16 is the spookiness of inconsistent verdicts. I get that. So I  
17 think that is just a fact that's true, but I'm not sure of  
18 much more, you know, beyond that. I actually had thought of a  
19 question for plaintiffs' counsel on the point of why does the  
20 bankruptcy -- why does the difference in terms of the  
21 debtor's facility to defend itself become sort of important  
22 once the bankruptcy is filed, but that's not going to be a  
23 question for you because you're not even representing the  
24 debtor.

25 MR. ELIADES: Thank goodness, Judge.



1 THE COURT: There you go.

2 MR. ELIADES: So, Your Honor, I don't think there's  
3 any serious question that the claims related to the non --  
4 that the claims against and of the nondebtor parties in at  
5 least the four litigations that we're concerned with are  
6 related to.

7 THE COURT: Do you find your clients more at risk  
8 somehow if the case is against you proceeding in State Court  
9 apace?

10 MR. ELIADES: I don't know if I'm the right person  
11 to answer that, Judge, because I'm not involved in the defense  
12 of the substantive cases. I can't imagine that my client  
13 would authorize me to say yes in that --

14 THE COURT: And yet if you say no, then that has an  
15 implication to the issue at hand.

16 MR. ELIADES: Your Honor, I think there's no serious  
17 question that the Wyndham and the nondebtor cases are related  
18 to and that the cases were properly removed. So once you  
19 clear that admittedly low hurdle, the burden shifts to the  
20 parties seeking remand or permissive abstention to establish  
21 that by a preponderance of the evidence. And the Wyndham  
22 Defendants submit that none of the plaintiffs have satisfied  
23 their burden with respect to the four cases.

24 The plaintiffs in C.A., B.H., K.R. and A.H. present  
25 two identical arguments regarding the joint removals of the

1 Wyndham parties and other nondebtor defendants.

2           The first is that the plaintiffs assert that each  
3 matter was improperly removed and is therefore void because  
4 the debtors have previously removed the entirety of each  
5 litigation to this Court rather than just the claims against  
6 the debtor parties.

7           The plaintiffs then argue that the cases should be  
8 remanded because they satisfy -- under the circumstances,  
9 satisfy the test for abstention and/or remand.

10           Your Honor, the first argument is easily dealt with.  
11 The Roosevelt Inn Defendants' notices of removal state that  
12 the claims being removed are those against the Roosevelt Inn  
13 Defendants asserted by the plaintiff, the Roosevelt Inn  
14 Defendants against additional defendants and other  
15 crossclaims. The other -- the claims of the -- the claims  
16 against the nondebtor parties are not subject of the notices  
17 of removal filed by the debtors.

18           The second argument in connection with the void  
19 argument, the plaintiffs cite to the Brown versus Jevic case,  
20 it's a Third Circuit case out of 2009, for the proposition  
21 that the Wyndham matters were not properly removed. The Brown  
22 and the removal statute that are subject of Brown are  
23 inapplicable to these cases, Your Honor. The matter in Brown  
24 was removed pursuant to 28 U.S.C. § 1453 which deals with the  
25 removal of class actions under the Class Action Fairness Act

1 of 2005 and that statute provides that an entire class action  
2 needs to be removed. You can't -- you can't cherry pick the  
3 claims. The Wyndham entities as well as the debtors removed  
4 under a different statute, 28 U.S.C. 1452, and that statute  
5 specifically says that a party can remove any claim or cause  
6 of action. So the void argument, Your Honor, we think fails.

7 Remand and abstention, Your Honor, we briefed that  
8 pretty extensively. I know the debtors did as well -- yes,  
9 the debtors did and certainly the other nondebtor defendants  
10 briefed the elements and, you know, I'm happy to address any  
11 of the elements, Your Honor.

12 THE COURT: Do you agree, though, I mean, I think  
13 the focus here really is on the Court's discretion to remand  
14 claims on any equitable grounds. I mean do you agree that  
15 that's sort of where we all are?

16 MR. ELIADES: I think that's the standard, Judge, in  
17 light of the statutory -- I think that the discretion is  
18 viewed in light of the statutory grant of jurisdiction in this  
19 type of matter. So --

20 THE COURT: But once you're there, there still is  
21 the Court's exercise of discretion, right?

22 MR. ELIADES: No question, Judge, yes.

23 THE COURT: Okay. I mean just not to put too fine a  
24 point on it, but that's where I see this coming down and  
25 that's why I went through all of these factors.

1           MR. ELIADES: Yes, and in looking at all of these  
2 factors at least as the Wyndham Defendants do, that the  
3 plaintiffs haven't met their burden by a preponderance of the  
4 evidence that these factors militate in favor of permissive  
5 abstention or remand.

6           We talked about the administration, the effect of  
7 the administration on the bankruptcy estate. I think that  
8 that factor weighs, frankly, in favor of Federal Court  
9 jurisdiction.

10           The difficulty or unsettled nature of applicable  
11 law, I think that does not favor the plaintiff. The Third  
12 Circuit has noted time and again that Federal and State Courts  
13 are equally capable of applying settled state case law to a  
14 difficult set of facts.

15           THE COURT: But what if the plaintiff -- well, but  
16 what if it is correct that this particular issue, the  
17 Innkeeper liability for the alleged sex trafficking, what if  
18 that is kind of a new knocking it up a notch, you know, it's a  
19 new issue, would that not suggest that it should go back to  
20 the State Courts to handle?

21           MR. ELIADES: Well, Your Honor, I haven't seen any  
22 briefing that that is the case so I would be happy to address  
23 that, but it doesn't sound to me like there's a new tort which  
24 has been created.

25           THE COURT: Well, I guess the issue would be whether

1 that's an extension of pushing beyond where everything has  
2 happened in the past, whether this is a new level. Not a new  
3 cause of action necessarily, but it may be a new level of  
4 liability. I'm just posing that as a thought.

5 MR. ELIADES: The comity factor, Judge, we think  
6 weighs in favor of staying here. These cases, you know, are  
7 Philadelphia cases. They'll be handled here in Philadelphia.

8 THE COURT: Oh, even the folks that were just here,  
9 you have no idea where they came from. They've come as far  
10 away as Northampton County and Lancaster and Berks County all  
11 working very hard to get here to downtown Philadelphia.

12 MR. ELIADES: I'm sure, Judge. The right to a jury  
13 trial is the same here as it was in the Court of Common Pleas.

14 THE COURT: No doubt.

15 MR. ELIADES: The degree of relatedness or  
16 remoteness of the proceedings to the main bankruptcy case I  
17 think is close. We don't think that prejudice favors the  
18 plaintiff and we fall back to, you know, those cases that say  
19 that, you know, abstention and even remand are extraordinary  
20 remedies, right? They are the exception as opposed to the  
21 rule when there is otherwise valid Federal Court jurisdiction.

22 THE COURT: Thank you.

23 MR. ELIADES: Thank you, Judge.

24 THE COURT: Did I hear that somebody wants to argue  
25 that A.H. was too late to move -- yes. Oh, look at that, the

1 hand is still going up, okay.

2 MR. SMITH: Yes, Your Honor.

3 THE COURT: I don't mean to jump over anybody else  
4 who's planning to argue before getting to this point, but why  
5 don't you tell me what's up.

6 MR. SMITH: Sure. Thank you, Your Honor. Matthew  
7 Smith from Saul Ewing on behalf of the additional defendant,  
8 Eighty Eight, L.P. We are only involved in the A.H. case  
9 specifically. We're joined as a third-party defendant. I  
10 don't have a lot to add from what Wyndham's counsel spoke to  
11 on the other issues. The only unique issue that I was going  
12 to speak to was the untimeliness.

13 THE COURT: Yes.

14 MR. SMITH: So we filed a joint notice of removal  
15 along with the Wyndham --

16 THE COURT: As I understand, the point is you filed  
17 on time, but the wrong case.

18 MR. SMITH: Correct. So the 30-day window applies  
19 from -- 30-day window in 1447, we cite case law in our brief  
20 that it applies to bankruptcy removals under 1452 as well. We  
21 also cite case law that it's a strict 30-day rule unless it's  
22 an issue of subject matter jurisdiction. You know, cases  
23 where it's 31 days, too bad. We also cited a case in our  
24 brief where a similar issue came up, a party filed it on the  
25 wrong docket. There were two cases removed. The cases had

1 been previously consolidated. The party filed a motion to  
2 remand on the wrong docket, eventually later tried to file a  
3 motion to remand on the correct docket, and the Court said,  
4 you know, that's not just a clerical error. It's untimely.

5 So it's similar to what happened here. Plaintiff  
6 filed a motion to remand in the 3277, the Roosevelt  
7 Defendants' removal case, but not in 3450, which was the case  
8 removed by codefendants Wyndham and Eighty Eight, L.P. So we  
9 raised this issue in our response which was filed yesterday  
10 because their motion had been untimely filed.

11 THE COURT: Let me pose a couple of familiar  
12 principles. Going back to the shield and the sword, this  
13 timing thing is being used as a sword, not so much a shield,  
14 because nobody's going to say, wow, what a surprise this all  
15 is, right? The filing was, albeit in the wrong case, it was  
16 obviously a related case, right?

17 MR. SMITH: Yes.

18 THE COURT: And the Court has the ability to assign  
19 an earlier filing if justice so requires, right?

20 MR. SMITH: So Your Honor --

21 THE COURT: Would you not agree with that?

22 MR. SMITH: In circumstances, yes.

23 THE COURT: Okay, you're going to tell me that the  
24 statute says must be filed in 30 days.

25 MR. SMITH: Yes.

1 THE COURT: That's what you're going to tell me?

2 MR. SMITH: Yes, and --

3 THE COURT: Where does it say the Court cannot  
4 exercise some equitable principles?

5 MR. SMITH: So there's case law saying that the  
6 Court actually lacks authority once that 30-day window runs to  
7 remand the case. Even if the Court chooses to, it can't.

8 THE COURT: What is the case for that strident view?

9 MR. SMITH: We cite multiple cases in our briefing.

10 THE COURT: Give me your best one.

11 MR. SMITH: Sure. I would say the --

12 THE COURT: It is different than a statute of  
13 limitations.

14 MR. SMITH: Correct. Correct. The Roxbury case,  
15 Third Circuit case, saying courts do not have the power to  
16 remand for procedural defect once the 30-day statutory period  
17 lapsed. So this issue came up in a case we cited a little  
18 bit, as well, where the Court said we have power to correct  
19 clerical mistakes, but this didn't fall under that umbrella.  
20 Plaintiff filed a motion last night asking the Court to  
21 retroactively deem its motion timely. They realized that, you  
22 know, the days had passed.

23 THE COURT: This is all of our favorite nunc pro  
24 tunc.

25 MR. SMITH: So I mean we would respectfully ask for



1 at least an opportunity to respond to that in writing. I just  
2 got my hands on it late last night.

3 THE COURT: How much time do you need?

4 MR. SMITH: Not a lot.

5 THE COURT: When I ask that, it is, in part, a trick  
6 question. One of the sacrosanct rules that I grew up with in  
7 practice was what Henry Reed said, you may remember this,  
8 would call the Goosey Gander Rule. So if a timing rule is  
9 good for the goose, it's going to be good for the gander. So  
10 when you tell me when you're going to file something under the  
11 circumstances of this argument, you will want to file on time.

12 MR. SMITH: Absolutely, Your Honor.

13 THE COURT: Okay. So how much time do you need?

14 MR. SMITH: Ten days.

15 THE COURT: On this principle?

16 MR. SMITH: Seven days. Is there a time Your Honor  
17 would suggest? Seven days? Five days?

18 THE COURT: Well, how about -- I'm sorry.

19 MR. SMITH: Whatever Your Honor picks, we'll get it  
20 in on time.

21 THE COURT: How about by Tuesday, close of business  
22 Tuesday?

23 MR. SMITH: Sure.

24 THE COURT: Does that run afoul of any major family  
25 holiday or birthday, wedding, et cetera?

1 MR. SMITH: Nope. That sound good, Your Honor.

2 THE COURT: Good. Sounds good to me. Anything else  
3 on A.H.'s problems?

4 MR. SMITH: No, Your Honor.

5 THE COURT: Speaking of problems, although I'm being  
6 a little light on some of the features of this particular  
7 argument, it is clear this is a super serious case involving  
8 extremely serious issues for people, not just the plaintiffs,  
9 of course, but the defendants and the various people involved  
10 in the case, and as lawyers and judges, frankly, we all become  
11 fairly comfortable with handling serious matters sometimes in  
12 a relatively lighthearted way. Please do not misunderstand  
13 me. I recognize this is a super serious case. The legal  
14 principles are very serious as well. They're interesting, by  
15 the way, but at the root of all of these cases, there are some  
16 really very serious allegations if borne out of unspeakable  
17 activity. So Tuesday close of business on this narrow issue.

18 MR. SMITH: Will do. Thank you, Your Honor.

19 THE COURT: Okay. Other comments, arguments? Yes,  
20 sir -- wait, I've got one here. Come on up. Why don't you  
21 get in line.

22 MS. FOREMAN: Melanie Foreman, Marshall Dennehey.

23 Your Honor, I represent Alpha-Centurion Security  
24 Inc. --

25 THE COURT: Right.

1 MR. SMITH: -- only in the M.B. lawsuit.

2 THE COURT: Okay.

3 MR. SMITH: I don't want to belabor the points that  
4 have already been very fully argued to you. I would simply  
5 like to take the opportunity to make a few points to Your  
6 Honor. Since this matter has been removed to the Eastern  
7 District, there has already been more efficiency in this  
8 lawsuit. All of the lawsuits, all five of them, have been  
9 consolidated before Your Honor which was not the case in State  
10 Court. As I mentioned, I only represent Alpha in the M.B.  
11 lawsuit which was the lawsuit that was about to go to trial.  
12 The State Court did not rule on any motions in limine in that  
13 case, no rulings had been made, and the trial had not started.  
14 Well, there had been a deposition. Nothing had been moved  
15 into the record. So the trial had not, in fact, started.

16 This is indeed a very complex case, but it is not  
17 complex because of the law that is at issue. Plaintiffs'  
18 claims sound in negligence and negligent infliction of  
19 emotional distress alone. There is a new statute in  
20 Pennsylvania under the human trafficking laws. Plaintiff does  
21 not have a claim under that statute. If she did, this may be  
22 a different case and I would say, yes, it is unique, but as it  
23 is, these are negligence claims and this Honorable Court is  
24 more than able to determine those matters.

25 Your Honor, Mr. Marion mentioned some things that

1 Judge Chan in the Bankruptcy Court had advised. I was at that  
2 hearing and so I'll try to shed a little more light on that.

3 The M.B. lawsuit does remain completely stayed.

4 There are no other hotels within that lawsuit. Judge Chan has  
5 repeatedly advised the parties that she has no intention of  
6 permitting any of the debtors' assets going to one potential  
7 tort creditor simply because she was first in line. Judge  
8 Chan has every intention of making sure that the alleged  
9 victims, including M.B., have equal rights and that none  
10 should have priority over the others. To that end, she's  
11 ordered that the claimants as well as the insurers and all of  
12 the other codefendants participate in the mandatory mediation  
13 with Judge Frank. Remanding the M.B. matter when the  
14 Bankruptcy Court is poised to try to resolve the matter and  
15 where it remains stayed would not be in the best interest of  
16 the parties and would be contrary to the statutes that my  
17 colleagues have already explained to you.

18 Finally, Your Honor, though we are in the Eastern  
19 District of Pennsylvania, we are certainly in Philadelphia,  
20 and the plaintiff will certainly get a jury of her peers if we  
21 remain in Federal Court.

22 Thank you.

23 THE COURT: Thank you. Okay, somebody -- yes, sir?

24 MR. MAHONEY: Your Honor, Harry Mahoney on behalf of  
25 American Motor Inns, Inc. I think you alluded to this at the

1 beginning of the session. I just wanted to put on the record  
2 that we would join in the arguments made by counsel for  
3 defendant Wyndham.

4 THE COURT: Okay. Thank you.

5 Okay, others, before I go back to the beginning?

6 MR. HEINOLD: Your Honor, if you want me to respond  
7 to Eighty Eight, L.P.'s untimeliness argument.

8 THE COURT: Why don't you do that now and then we'll  
9 keep that separate.

10 MR. HEINOLD: So, Your Honor, it's undisputed we  
11 filed it under the 3277 case which was the Roosevelt action  
12 when it was the notice of removal was filed in the 3430  
13 action. However, all the defendants had notice of the filing  
14 on time as it was filed on September 1st which was within the  
15 30-day period. The Wyndham Defendants, who are represented by  
16 Mr. Heller and other attorneys at his office, were on the  
17 attorney record of that 3277 case. Mr. Smith and the other  
18 attorneys who represent Eighty Eight, L.P. were also on that  
19 and, in fact, actually entered their appearance in that 3277  
20 action the day before it was filed. Additionally, we sent a  
21 copy by e-mail of the time-stamped version on the 2nd and when  
22 Mr. Heller notified us on the 14th of -- that it was filed in  
23 the wrong action, we immediately within the hour filed it  
24 under the appropriate headings. As was mentioned by Mr.  
25 Smith, we filed, and Your Honor acknowledged, we filed a

1 motion nunc pro tunc seeking that the motion be retroactively  
2 determined to be timely as there is no prejudice to any of the  
3 parties as they were well aware of the issues at hand. Each  
4 have actually filed responses. I believe Mr. Heller may have  
5 responded partially and incorporating his colleagues' other  
6 arguments, but these are issues that have been responded to  
7 and there has been no prejudice raised as to the timeliness.

8 THE COURT: Thank you. When you're falling on your  
9 sword, just don't bleed on the carpet, all right?

10 MR. HEINOLD: Understood, Your Honor.

11 THE COURT: All right. I understand. The point I  
12 was making to your opponent there is there is an underpinning.  
13 We're all -- I can't remember what the actual quotation is  
14 about, but, you know, misfilings, accidental clerical  
15 misfilings, if that's what this was, happen to all of us and  
16 there but for, you know, whatever goes -- John Branford is the  
17 actual quotation. Ms. Greene, remind me, who was that quote?  
18 Is that it?

19 THE LAW CLERK: I think so.

20 THE COURT: Yes. Okay, I think that issue which  
21 you're going to focus on, folks, is going to be 30 days and 30  
22 days, and that's all it needs, period, end of story, but I'll  
23 leave that to you all to squabble about.

24 Ms. Marks, do you want to come back?

25 MS. MARKS: Yes, Your Honor. I'll be brief.

1 THE COURT: Okay.

2 MS. MARKS: Your Honor, certainly this Court is  
3 capable of hearing personal injury matters. I never meant to  
4 suggest otherwise.

5 THE COURT: No, no, please, I didn't take it that  
6 way.

7 MS. MARKS: My only point, Your Honor, is that these  
8 are novel applications of state law.

9 THE COURT: Isn't the statute a part of  
10 anybody's claim specifically or not?

11 MS. MARKS: It is not, Your Honor. Initially, M.B.  
12 filed her claim, there were common law negligence claims as  
13 well as a claim under the Pennsylvania Human Trafficking Law,  
14 however, it was determined that that law was not in effect at  
15 the time M.B. was sex trafficked so there was an amendment of  
16 the Complaint.

17 Your Honor, we are here under pretenses by the  
18 Roosevelt Defendants to drag these cases out of Philadelphia  
19 Court of Common Pleas. The plaintiffs have a right to  
20 determine where their cases should be heard. They chose  
21 Philadelphia. The citizens of Philadelphia are being deprived  
22 of the opportunity to sit in judgment of the Roosevelt Inn and  
23 other defendants involving hotels in Philadelphia County. The  
24 Roosevelt Defendants are citizens of Philadelphia County.  
25 Don't they want a jury made up of their peers? Defendants

1 have sent in a playbook for other defendants to file to  
2 manipulate the Court to deprive plaintiffs of their place and  
3 their chosen forum.

4 THE COURT: Would somebody be able to argue that if  
5 the -- if a large settlement demand is what throws somebody  
6 into bankruptcy, that there is a chilling effect of having  
7 settlement discussions?

8 MS. MARKS: Your Honor, my --

9 THE COURT: What I heard was you dropped a big  
10 demand on them, they became concerned because the number was  
11 so high. If that's true, does that mean that every time  
12 somebody gets a high demand that might be in excess of what  
13 they think their assets are, they're going to scoot over to  
14 Bankruptcy Court? And where's the good policy in that if  
15 people are in favor of settlements?

16 MS. MARKS: Well, Your Honor, I don't think it's a  
17 good policy if debtors or defendants like the Roosevelt  
18 Defendants get to use the Bankruptcy Court proceedings as a  
19 shield from liability. I don't think that would be a good  
20 outcome. Our clients, you know, their objective is to expose  
21 the hotels where they were sexually exploited and --

22 THE COURT: Well, let me ask the question that  
23 actually does occur to me and here the issue is, is there not  
24 fundamentally at least some difference that I'm going to get  
25 to in a minute between the Federal Court in the bankruptcy



1 setting and State Court? What if a debtor has so little money  
2 or in the way of assets has so little assets that it cannot  
3 defend itself in State Court, but they can operate if they go  
4 into the bankruptcy world? Are they not prejudiced  
5 fundamentally by being made to defend without any assets and  
6 the ability to defend in State Court? How can they put up a  
7 fight if they have no money and no assets?

8 MS. MARKS: Your Honor, I think that the point is  
9 the Bankruptcy Court can't determine the claims. The claims  
10 have to be determined --

11 THE COURT: Well, no, that's why they get the  
12 protection of the bankruptcy and they stay it while they kind  
13 of collect themselves.

14 MS. MARKS: But plaintiffs' claims don't go away.  
15 They have to be determined. There has to be some type of  
16 judgment or verdict and why we're here today is the  
17 determination as to where that should be held.

18 THE COURT: But there's also a when aspect to what  
19 you're doing here as well because the notion is that you want  
20 to be remanded to State Court and get back up and running  
21 where you were going to be up and running.

22 MS. MARKS: Yes, Your Honor. Yes.

23 THE COURT: But what happens if, as a result of all  
24 this, and there's a lack of resolution on the insurance  
25 coverage, you have the Roosevelt Defendants basically left

1 defenseless because they have no wherewithal to defend  
2 themselves. I'm posing this as a theoretical question and  
3 does that not mean they should be allowed to stay in  
4 Bankruptcy Court, stay the claim against them, and there we  
5 have it?

6 MS. MARKS: Well, Your Honor, the Roosevelt  
7 Defendants are being defended by counsel which is being paid  
8 for by their insurance companies so I don't think that we have  
9 that situation and it's the same -- what Your Honor presents  
10 would be the same whether in State or Federal Court. The  
11 Bankruptcy Court can't determine the plaintiffs' lawsuits.  
12 They have --

13 THE COURT: No, but the Bankruptcy Court can stay  
14 the proceedings.

15 MS. MARKS: And they have been stayed as to the  
16 Roosevelt debtors.

17 THE COURT: Okay.

18 MS. MARKS: Your Honor, just one last point. These  
19 cases are factually similar to the Boy Scout case where in  
20 that case, the plaintiff filed in State Court, it was removed  
21 to Federal Court as a result of a bankruptcy, and in that  
22 court, the court of this District remanded those cases back to  
23 State Court. And I would ask that Your Honor do the same and  
24 remand M.B, C.A., B.H. and K.R.'s cases back to State Court.  
25 Thank you.

1           THE COURT: Anything else from anybody? Now would  
2 be the time if you're going to pop up and say something more.

3           Yes, sir?

4           MR. ELIADES: Your Honor, I just have one short  
5 point.

6           THE COURT: Sure.

7           MR. ELIADES: On the issue of the effect of Federal  
8 Court jurisdiction over the litigations on the administration  
9 of the debtor's bankruptcy estates, as Your Honor's been  
10 advised, the Bankruptcy Court has ordered a mediation of  
11 claims involving the debtors and parties related to the  
12 debtors in the Bankruptcy Court. That order leaves open the  
13 possibility for the Bankruptcy Court to direct additional  
14 parties to mediate these litigations. Wyndham and  
15 other nondebtor --

16           THE COURT: They can only order people if those  
17 other parties have some kind of a crossclaim, existing  
18 crossclaim against them, right? I mean they can't just --

19           MR. ELIADES: And there's the jurisdiction issue,  
20 Judge, which I think I'm getting to. Wyndham and other  
21 nondebtor parties submitted statements to Your Honor  
22 consenting to -- at least the Wyndham defendants did --  
23 consenting to participate in a global mediation, whether that  
24 mediation occurs in the Bankruptcy Court or whether it occurs  
25 in the District Court, and to the extent that Your Honor would

1 choose to retain jurisdiction over these litigations, it is  
2 within Your Honor's power to refer the matters to the  
3 Bankruptcy Court for mediation only, to conduct a partial  
4 referral, which would have an impact on the administration of  
5 the debtor's bankruptcy.

6 Thank you, Judge.

7 THE COURT: Yes, sir.

8 MR. MARION: Your Honor, I just wanted to add to  
9 remind Your Honor that Ms. Marks had indicated that there was  
10 no allegation here of a bad faith bankruptcy filing by my  
11 clients and that the steps my clients have taken both to file  
12 the bankruptcy and to remove to this Court were in accordance  
13 with the statutory authority granted by Congress.

14 Thank you.

15 THE COURT: Now's the time if anybody else wants to  
16 say anything. Okay, we're adjourned. Thanks very much.

17 Actually, before I adjourn, I gave counsel after the  
18 negotiations and until Tuesday close of business to address  
19 further the filing and timing of the A.H. motion to remand.  
20 It is my habit to give counsel after an argument that's had a  
21 fair amount of give and take and a number of people and then  
22 the Court asking questions to give counsel the opportunity to  
23 supplement your papers. When I say supplement, I really mean  
24 supplement. I don't mean to repeat what you've already said.  
25 I'll give you all that opportunity as well under certain

1 rules. One of those rules is that you can file -- you can  
2 submit no more than seven one-sided pages, double-spaced type  
3 large enough for a normal human being to read, no footnotes,  
4 no appendices, no attachments, and one-inch margins all around  
5 and it must be seven pages that includes the caption that you  
6 use and your signature line. Is there anything ambiguous  
7 about what I mean about seven pages? Okay, I really would  
8 confine yourself to anything that opposing counsel raised that  
9 you might want to nail down, anything that the Court asks that  
10 you want to discuss or address, and get that to me by the  
11 close of business on Tuesday which would be, just to be  
12 precise, Tuesday is October the 5th, close of business, my  
13 close of business -- well, close of business is 5 o'clock.  
14 Okay? If that really causes somebody some serious problems in  
15 terms of the timing, let me know, but you all have so many  
16 colleagues and capabilities that I'm sure that you can make  
17 the best deadline.

18 Again, my apologies for holding you up with that  
19 other case, but I hope you found it at least somewhat  
20 interesting and thanks very much.

21 We're adjourned. Bye.

22 MS. MARKS: Thank you, Your Honor.

23 (Court adjourned)  
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of the proceedings in the above-entitled  
matter.

*Kathleen Feldman*

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Kathleen Feldman, CSR, CRR, RPR, CM  
Official Court Reporter

Date: October 8, 2021

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